Office-Supreme Court, U.S.
FILED
JUL 13 1981
ALEX STEVAS,
CLERK

No. 80-2099

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

THOMAS D. DAVIS, Petitioner,

v.

BRYANT MUELLAR, Sheriff of Rolette County, North Dakota, Respondent.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN SUPPORT OF PETITIONER OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, PAPAGO TRIBE, MESCALERO APACHE TRIBE, HAVASUPAI TRIBE, UTE MOUNTAIN UTE TRIBE, SISSETON-WAHPETON SIOUX TRIBE, GILA RIVER INDIAN COMMUNITY, DEVILS LAKE SIOUX TRIBE, AND THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., AS AMICI CURIAE.

LEO BRODEN
P.O. Box 842
Devils Lake, North Dakota 58301
Tel.: (701) 662-2616

Attorney for Amici Curiae

No. 80-2099

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

THOMAS D. DAVIS, Petitioner,

v.

BRYANT MUELLAR, Sheriff of Rolette County, North Dakota, Respondent.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN SUPPORT OF PETITIONER OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, PAPAGO TRIBE, MESCALERO APACHE TRIBE, HAVASUPAI TRIBE, UTE MOUNTAIN UTE TRIBE, SISSETON-WAHPETON SIOUX TRIBE, GILA RIVER INDIAN COMMUNITY, DEVILS LAKE SIOUX TRIBE, AND THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC., AS AMICI CURIAE.

LEO BRODEN
P.O. Box 842
Devils Lake, North Dakota 58301
Tel.: (701) 662-2616

Attorney for Amici Curiae

CONTENTS

AUTHORITIES. ii

INTEREST OF AMICI CURIAE 1

SUMMARY OF ARGUMENT. 2

ARGUMENT 3

THE DECISION BELOW JEOPARDIZES TRIBAL SELF-GOVERNMENT. 3

A. Tribal Extradition Laws Are Essential to Tribal Self-government. 3

B. The Political Integrity of Indian Tribes and Tribal Courts Is Threatened by the Decision Below. 5

CONCLUSION 8

AUTHORITIES

Cases	Page
Arizona ex rel. Merrill v. Turtle, 413 F.2d 683 (9th Cir. 1969), cert. denied, 396 U.S. 1003.	5
Fisher v. District Court, 424 U.S. 382 (1976).	5,7
Montana v. United States, ____ U.S. ____ (No. 79-1128, March 24, 1981).	8
United States v. Mazurie, 419 U.S. 544 (1975).	4
Williams v. Lee, 358 U.S. 217 (1959).	5,7

INTEREST OF AMICI CURIAE

Amici Curiae are deeply concerned about this State invasion of the Turtle Mountain Reservation to arrest a tribal member. Each amici tribe maintains a tribal court with extensive jurisdiction over Indians. Each amici tribe has an extradition law similar to that of the Turtle Mountain Band. These laws have generally worked in practice, but the decision below may encourage other state authorities to disregard tribal laws. It should be corrected by this Court to maintain cooperation in Indian country law enforcement.

The Association on American Indian Affairs, Inc., is a nonprofit membership corporation organized under the laws of the State of New York for the purpose, inter alia, of protecting the rights of self-government exercised by American Indian tribes.

The Association is the largest Indian interest organization in the United States and has a national membership of 50,000 that includes both Indians and non-Indians. The Association frequently has participated in leading cases involving issues of Indian law before the federal and state courts. The Association shares the concern of amici tribes over the illegal state arrest of an Indian in tribal Indian country.

SUMMARY OF ARGUMENT

Problems in reservation law enforcement are minimized when the States respect the legitimate authority of the tribes and vice versa. Tribal extradition laws, which provide a vehicle for enforcing state laws, define respective areas of responsibility. These laws are a legitimate exercise of tribal authority, and they are essential to tribal self-government. If a tribe is unable

to enforce these laws against state officials who chose to break them, such laws are useless and meaningless. This lawless state conduct within a reservation constitutes an impermissible interference with tribal self-government, and such conduct, if not remedied, seriously impairs the political integrity of the Indian tribes and the tribal courts.

ARGUMENT

THE DECISION BELOW JEOPARDIZES TRIBAL SELF-GOVERNMENT

A. Tribal Extradition Laws Are Essential to Tribal Self-government.

Many Indian tribes utilize extradition procedures when Indians on the reservation are wanted by state authorities. These tribal procedures are easily complied with by state officials, and in most cases, state cooperation and compliance with the tribal

extradition laws has not been a problem. But if the decision below is allowed to stand, state compliance with tribal extradition laws could become the exception rather than the rule. As delicate matters of law enforcement on many reservations across the country require close cooperation among state, tribal, and federal officials, a rule that permits a breakdown in the lines of communication and cooperation between state and tribal officials should not be sanctioned by this Court.

Indian tribes have governmental authority "over both their members and their territory". United States v. Mazurie, 419 U.S. 544, 557 (1975). This tribal authority necessarily includes the power to adopt laws, approved by the federal government, which determine the manner in which tribal members are removed from the reservation to answer

for state crimes. Indeed, it has been held that tribal control of the extradition process is "essential" to tribal self-government. Arizona ex rel. Merrill v. Turtle, 413 F.2d 683, 685-86 (9th Cir. 1969), cert denied 396 U.S. 1003. When such essential functions of tribal self-government are jeopardized, they must be protected by the federal courts. Fisher v. District Court, 424 U.S. 382 (1976); Williams v. Lee, 358 U.S. 217 (1959).

B. The Political Integrity of Indian Tribes and Tribal Courts Is Threatened by the Decision Below.

The governmental interest and authority of the Turtle Mountain Band were not respected by the court below. The usual considerations of comity between state and federal courts arise without involvement of a tribal government, the third sovereign here. Comity ought

to be reciprocal. The comity that North Dakota has denied the Turtle Mountain court should not be the basis of federal court abstention. Tribes must depend on the federal courts to intervene against state interference on reservations, an historic duty that the court below failed to fulfill. This protection must occur at a meaningful time, when the illegal arrest occurs, not after lengthy state court proceedings.

Despite the appearance of the Turtle Mountain Band and its request for state compliance with the tribal extradition law, the court below refused to order the release of petitioner Davis until the State complied with the tribal extradition law. The Tribe was thus denied a remedy for lawless state conduct within the reservation involving tribal members. If state officials can violate such tribal laws with impunity, the

tribal laws serve no function and become meaningless. This is an intolerable situation in an area where the Tribe is exercising legitimate, federally-approved authority.

Tribal extradition hearings are, of course, conducted by tribal courts. This Court has long recognized that state interference with tribal courts frustrates tribal self-government. Fisher v. District Court, supra; Williams v. Lee, supra. While the majority below recognized that "tribal sovereignty undoubtedly includes the power to establish a court system", and that "such sovereignty as the tribes do possess is entitled to recognition and respect both by state and federal government", such exhortations amount to mere lip service, as the court below failed to provide any meaningful remedy for the admitted state violations of the tribal law. This tribal law has a direct

effect upon the political integrity of the Tribe and the tribal courts. Montana v. United States, ____ U.S. ____ (No. 79-1128, March 24, 1981) (slip op. page 20). If legitimate tribal laws and tribal court processes can be so easily evaded, the authority of Indian tribes over their members is irreparably compromised.

CONCLUSION

As the decision below substantially affects the viability of the extradition procedures of many Indian tribes across the country, this Court is respectfully requested to grant a writ of certiorari to review the decision.

Respectfully submitted,

Leo Broden
P. O. Box 842
Devils Lake, North Dakota 58301
Tel.: (701) 662-2616

Attorney for Amici Curiae